

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04cv12627

STEPHEN D. CAIAZZO,

Plaintiff,

v.

THE MEDALLION INSURANCE
AGENCIES, INC.,

Defendant.

**DEFENDANT'S MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL
FURTHER DEPOSITION TESTIMONY OF FORMER PLAINTIFF'S
ATTORNEY, THOMAS COLLINS**

The defendant moves to compel the plaintiff's former attorney, Thomas Collins, to testify regarding the subject matters outlined below. As grounds for this motion, the defendant states that the plaintiff has waived the attorney-client privilege by testifying regarding attorney-client communications and by placing the information protected by the privilege "at issue" through his claims and testimony. Further support of this motion is set forth below.

FACTUAL BACKGROUND

The plaintiff, Stephen Caiazzo ("Caiazzo"), brought three separate claims against his former insurance agent, The Medallion Insurance Agencies, Inc. ("Medallion"). Caiazzo's first claim involves an uninsured personal injury claim brought against him by Joseph Cuttichia (the "Cuttichia claim"). The plaintiff asserts that he reported the claim to Medallion and it failed to report the claim to Caiazzo's carrier. Medallion contends that Caiazzo failed to report the claim

until after he was defaulted in two lawsuits and a lien was asserted against his property. Upon receiving written notice in May 2003 from Caiazzo's former attorney, Thomas Collins, with information regarding the 1996 loss, Medallion promptly submitted a Notice of Occurrence to Caiazzo's insurer. The insurer, Pacific, denied the claim because of lack of coverage for the subject claim, late reporting, and violations of the policy terms.

The plaintiff's second claim involves a disability claim. Caiazzo claims he requested a disability policy and made a claim under said policy for a disability he suffered in 2001. Caiazzo claims Medallion failed to obtain the policy and/or failed to report his claim. Medallion asserts that Caiazzo never requested a disability policy. Caiazzo did not have a disability policy in effect as of the time he allegedly became disabled.

The plaintiff's third claim involves an alleged business property loss. Caiazzo claims unknown individuals removed personal property from his premises after he was evicted. At the time of this alleged loss and per his instructions to Medallion, Caiazzo did not have business property insurance due to the cost of the premium. Caiazzo's declination of property coverage is documented, and his other coverages were bound in strict compliance with Caiazzo's specific request. Medallion did in any event submit the claim, at his request, to Caiazzo's insurer, which denied the claim due to lack of property coverage.

ARGUMENT

The plaintiff waived the attorney-client privilege as to communications with Attorney Collins regarding the three claims asserted against the defendant by placing information protected by the privilege "at issue" through his own testimony in this case. *Sax v. Sax*, 136 F.R.D. 541, 542 (Dist. of Mass. 1991). "There are, under Massachusetts law, certain exceptions to the attorney-client privilege and some circumstances in which the privilege may be deemed

waived other than by express waiver.” *Darius v. City of Boston*, 433 Mass. 274, 277 (2000), citing P.J. Liacos, Massachusetts Evidence §§13.4.7, 13.4.8 at 786-789 (7th ed. 1999). In *Darius*, the Massachusetts Supreme Judicial Court found that a “litigant may implicitly waive the attorney-client privilege, at least partly, by injecting certain claims or defenses into a case.” *Id.* at 277-78. The First Circuit held in *Greater Newburyport Clamshell Alliance v. Public Service Co.*, 838 F. 2d 13, 20 (1988) that:

Fairness requires that the privilege holder surrender the privilege to the extent that it will weaken, in a meaningful way, the defendant’s ability to defend. That is, the privilege ends at the point where the defendant can show that the plaintiff’s civil claim, and the probable defenses thereto, are enmeshed in important evidence that will be unavailable to the defendant if the privilege prevails.

The First Circuit offered guidance on determining whether the privilege has been waived. First, the defendant should “demonstrate that the material to be discovered is relevant to their case.” *Id.* at 22. Second, the defendant should “demonstrate why it would be unreasonably difficult for them to obtain the information elsewhere or that redundant evidence will be helpful to their case. *Id.*

Here, the plaintiff waived the attorney-client privilege as to conversations with Attorney Collins relative to the facts and circumstances leading up to and surrounding the claims against the defendant. First, the plaintiff waived the attorney-client privilege by stating in Answer No. 12 to Interrogatories Propounded by the Defendant that Attorney Collins is the only witness known to Caiazzo with knowledge regarding the facts and circumstances of the events alleged in the Complaint. (Exhibit 1). This is a case of credibility as the plaintiff lacks any physical evidence to support his claims. When credibility is at issue and Attorney Collins is the only witness, the privilege should be deemed waived as the defendant will be disadvantaged in its

ability to challenge the plaintiff's claims. Additionally, the plaintiff waived the attorney-client privilege through his testimony regarding his three claims, which made Attorney Collins' involvement and knowledge regarding the claims and the information Caiazzo provided to him "at issue" in this litigation.

Caiazzo waived the attorney-client privilege as to the Cuttichia claim handled by Attorney Collins when he made Attorney Collins' involvement and the information provided to Attorney Collins "at issue" in the case. The first written notice Medallion received regarding the Cuttichia claim was a letter received from Attorney Collins dated May 16, 2003. (Exhibit 2). The letter indicates that Caiazzo did not have notice of the claim or lawsuits. Yet, contrary to the content of the May 16, 2003 letter, Caiazzo testified that he involved Attorney Collins in resolving the Cuttichia claim once he learned that there was a lien on his property. (Exhibit 3, pp. 68, 70, 71). Caiazzo testified that he provided written notice of the claim to Medallion in 1998 but lacks any documentation of this. Caiazzo testified that he involved Attorney Collins because of the lack of correspondence from the defendant. (Exhibit 3, p. 73). He further testified that upon learning that various court notices were received by his wife, from whom he was separated, and not forwarded to him, he asked Attorney Collins to "get this thing squared away." (Exhibit 3, pp. 107-08). Caiazzo claims that it was at that time that Attorney Collins drafted the letter attached as Exhibit 2.

Contrary to Caiazzo's testimony, the only documentation provided indicates the notice was given in May, 2003. The information Caiazzo supplied to Attorney Collins with respect to providing notice to Medallion regarding the Cuttichia claim, when Caiazzo learned of the claim, when he informed Medallion of the claim, and his communications or lack thereof with Medallion regarding the claim are highly relevant. Caiazzo claims that Attorney Collins only

became involved after notice was given to Medallion and because of the lack of response from Medallion. This is contested by the defendant. As reflected in the letter from Attorney Collins, Caiazzo did not know of the claim or report it to Medallion until he discovered the lien on his property and requested Attorney Collins report it to Medallion. (Exhibit 2). It is critical for the defense to learn whether Caiazzo indicated to Collins when he learned of the claim and when, if ever, he reported it. Medallion meets the standard established in *Greater Newburyport Clamshell Alliance* as this information is relevant to the central issue of this claim and it is impossible for Medallion to obtain this information from any other source. *See Greater Newburyport Clamshell Alliance*, 838 F.2d at 22.

Additionally, Caiazzo testified that he provided Attorney Collins with the initial letter he received from the plaintiff's attorney in the Cuttichia matter, the letter he also claims he forwarded a copy of to Medallion. When asked where the letters were from the plaintiff's attorney in the Cuttichia claim, Caiazzo said "Tom Collins had copies." (Exhibit 3, p. 109-10). Whether or not these letters exist and were forwarded to Collins goes to the central question of the timing of the notice provided to the insurer by Medallion. Fairness requires that Medallion have the opportunity to defend this claim and obtain deposition testimony from Attorney Collins on the subject.

Caiazzo also waived the attorney-client privilege relative to his claim to have obtained a disability policy through Medallion when he testified regarding Attorney Collins' involvement in the claim. Caiazzo testified that he received a policy or documentation that he had disability coverage. (Exhibit 3, p. 139). He testified that this documentation to support that he had a disability policy was provided to Attorney Collins. (Exhibit 3, p. 139, 141, 142). Specifically, Caiazzo testified:

As I said to you earlier, Tom Collins had the sheet. I looked at it, handed it to him, told him to do what he had to do to collect this...This was when I filed the claim with the BBO and everything else because I asked him to send me the document showing the disability...The file did not include that sheet of paper obviously because he knew how important it was to me. (Exhibit 3, p. 142).

Caiazzo further testified that any other documentation of the disability policy was destroyed.

(Exhibit 3, Day 2, p. 20). Medallion denies that Caiazzo ever requested a disability policy.

Caiazzo testified that the only documentation of a disability policy that he ever requested or obtained rests with Attorney Collins. Given that Caiazzo has brought Attorney Collins into this claim by stating he has the critical documentation, Attorney Collins' testimony on the subject is highly relevant to the defense. Further, Medallion is unable to obtain this information from any other source. Therefore, a waiver of the attorney-client privilege is warranted.

Caiazzo waived the attorney-client privilege with respect to his claim that Medallion failed to submit his business property claim by involving Attorney Collins in the processing of the claim. The information Attorney Collins has regarding Caiazzo's claim, the reporting of the claim to Medallion, and Caiazzo's representations to Attorney Collins regarding coverage is relevant and Medallion is unable to obtain this information from any other source.

Following the plaintiff's deposition, Medallion deposed Attorney Collins. Given the claims and prior testimony of Caiazzo, Medallion believed Caiazzo waived the attorney-client privilege. However, Caiazzo asserted the privilege at the deposition and prevented Attorney Collins from testifying regarding privileged communications relative to these claims. Although it is clear from Attorney Collins' testimony that he has information regarding these claims, he is unable to testify until the privilege question is resolved. (Exhibit 4, pp. 106-07).

Caiazzo points to Attorney Collins both for support of his claims and for an explanation

as to why he lacks documentation relative to his claims, yet seeks to hide behind the attorney-client privilege to prevent Medallion from deposing Attorney Collins to defend these claims. Fairness requires that the defendant be able to obtain this important evidence from Attorney Collins as it has become "enmeshed" in the plaintiff's claims in this matter. *Greater Newburyport Clamshell Alliance*, 838 F.2d at 20. The facts of this case support a waiver of the attorney-client privilege as to the plaintiff's claims in this matter.

CONCLUSION

WHEREFORE, the defendant moves that this Court allow this motion, and order Attorney Collins to testify regarding his knowledge of the plaintiff's claims against Medallion and information provided to him by Caiazzo relative to these claims as set forth above.

The Medallion Insurance Agencies, Inc.

By their attorneys,

/s/ Kerry D. Florio
William D. Chapman BBO #551261
Kerry D. Florio BBO #647489
MELICK, PORTER & SHEA, LLP
28 State Street
Boston, MA 02109
(617) 523-6200

Date: September 28, 2005

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

STEPHEN D. CAIAZZO,
Plaintiff

v.

THE MEDALLION INSURANCE
AGENCIES, INC.,
Defendant

CIVIL ACTION NO.
04-12627 RCL

PLAINTIFF'S ANSWERS TO INTERROGATORIES OF DEFENDANT

1Q. Please identify yourself fully, stating your full name, date of birth, social security number, residential address, business address, occupation and job title.

1A. Stephen Dennis Caiazzo; December 4, 1951; 031-38-6288; 2106 SW 49 Street, Cape Coral, FL 33914; disabled and unemployed.

2Q. Please identify each and every insurance agent and/or insurance broker through whom you obtained any insurance whatsoever from 1990 up to and including the present.

2A. Medallion Insurance Agency
Joe DeVincentis Insurance Agency

3Q. For each expert witness whom you expect to call at the trial of this action, and/or whom you have retained or specially employed in anticipation of litigation or in preparation for trial who is not expected to be called at the trial of this action, please state:

- a. the name, business address, residential address, educational and employment history;
- b. the subject matter on which each such expert is expected to testify or was retained or employed to consider;
- c. the substance of the facts and opinions to which each such expert is expected to testify or was retained or employed to consider; and

- d. a detailed summary of all the grounds for each such opinion together with the substance of all facts upon which such opinions are based.

3A. Not determined at this time.

4Q. Please state fully and in complete detail each and every fact to support Count I of your Complaint, including any and all facts that support your claim that Medallion alleged failure to report a personal injury claim to your insurer

4A. John D'Addario completely ignored my calls and correspondence from my attorney regarding this claim. In 2001, John D'Addario, his wife Jean and Joe DeVincentis ignored my calls. I left about thirty messages for Jean D'Addario at the agency and thirty-four calls for John and Jean D'Addario at their residence. John D'Addario also told me that I didn't have this insurance. Finally, they submitted a letter to the Insurance Board showing cancellation of my policies in November 2001, after the closing of my business.

5Q. Kindly describe in full and complete detail the notice you received of the personal injury claim set forth in Count I of your Complaint, including in your answer:

- a. when you received notice of said personal injury claim;
- b. from who (sic.) did you receive said notice;
- c. the manner in which said notice was received; and
- d. each and every action taken by you after receiving said notice.

5A. a. I received a letter from the plaintiff's attorney in about 1998, after suit had been filed.

b. See my answer to the preceding subpart.

c. I do not recall.

d. I gave the letter to John D'Addario. I then called him and he told me he would take care of it. I called him again, and he told me he had provided the information to the insurance company. After that, I left numerous messages for him to call me, but he did not return my calls.

6Q. Kindly describe in full and complete detail reporting the personal injury claim set forth in Count I to Medallion, including in your answer:

- a. when you reported said personal injury claim to Medallion;
- b. to whom the claim was reported, including name, address and job title;

- c. the manner in which it was reported; and
- d. any and all conversations with Medallion regarding said personal injury claim.

6A. See my answer to Interrogatory No. 5.

7Q. Please state fully and in complete detail each and every fact to support Count II of your Complaint, including but not limited to any and all facts that support your claim that Medallion negligently failed to report your disability claim.

7A. I requested a disability policy to protect the income I was making and because I moved kegs of beer, cases of beer and liquor, tables and chairs and a stage for bands. John D'Addario came to my restaurant and went over my income figures to compute the amount of coverage. I had to submit tax returns to establish my income. After my knee was reinjured in 2001, I called him regarding my disability policy. He told me I didn't have one. I insisted that I did. He agreed to look in the archives. After this, he would not return my calls.

8Q. Do you claim you obtained a disability policy from Medallion insurance for the policy year of 2001? If your answer is anything other than an unqualified "no", kindly describe in full and complete detail:

- a. from whom you requested said policy;
- b. when you requested said policy;
- c. whether a copy of said policy was sent to you and if so, where it is located; and
- d. any and all documents that support your claim that you requested said policy.

8A. a. John D'Addario

- b. I believe that I had such a policy for more than one year that would pay me \$1,500.00 per week if I became disabled. I believe a policy was in effect when I reinjured my knee in 2001.
- c. I saw the policy. I had to produce tax returns for an audit by the company on my income.
- d.

9Q. Did you make a worker's compensation claim for your injury and disability referred to in Paragraph 10 of your Complaint? If your answer is anything other than an unqualified "no", kindly describe in full and complete detail"

- a. when you made said claim;

- b. who, if anyone, assisted you in making said claim; including name, address and title; and
- c. the result of said claim, including any monies paid to you as a result.

9A. a. In 2001 or 2002

b. Attorney Tom Collins, 10 Main Street, Andover, MA

c. \$25,000.00 gross.

10Q. Please state fully and in complete detail each and every fact to support Count III of your Complaint, including but not limited to any and all facts that support your claim that Medallion negligently failed to report your personal injury claim.

10A. Count III does not refer to a personal injury claim.

11Q. Please state fully and in complete detail the time, place, parties to, including each parties' full name, last known address, occupation, and job title, and substance of any communication that was ever held with any Medallion representative concerning any insurance claims, including in your answer:

- a. the full name, last known address, occupation and job title of the person at Medallion, with whom you spoke regarding obtaining insurance coverage;
- b. the type or manner of communication;
- c. the date, time and place of each such communication;
- d. what documents were forwarded, if any, and by whom; and
- e. the nature and/or substance of each communication.

11A. Objection on the grounds that this interrogatory is overly broad and unduly burdensome and seeks information not within the scope of discovery.

12Q. Please state the full name, last known address, occupation, and job title of every witness known to you or to your attorneys who has any knowledge regarding the facts and circumstances of the events alleged in your Complaint, including, but not limited to, individuals with knowledge of any and all insurance obtained by you and any claims made by you, including claims referenced in your Complaint.

12A. Myself, Attorney Collins and possibly other individuals unknown to me at this time.

Signing as to objections:



Dean Carnahan, Esq.

Signed under the pains and penalties of perjury this 23 day of April 2005.



Stephen D. Caiazzo

CERTIFICATE OF SERVICE

I, Dean Carnahan, hereby certify that on this day I served this pleading on defendant by mailing a copy thereof, postage prepaid, to Kerry D. Florio, Esquire, Melick, Porter & Shea, LLP, 28 State Street, Boston, MA 02109

Date: April 27, 2005



DEAN CARNAHAN

Exhibit 2

**THOMAS P. COLLINS
ATTORNEY AT LAW**

10 MAIN STREET
SUITE L9
ANDOVER, MASSACHUSETTS 01810

Tel. No. 1 (978) 475-8846

Fax No. 1 (978) 475-7947

May 16, 2003

Mr. Joseph DiVincentis
Medallion Insurance Company
110 Florence Street
Malden, MA. 02148

Re: Joseph Cuttichia v. Donna's Pub, Inc. d/b/a Cai's
Malden District Court Docket No. 9850CV 0237

Dear Mr. DiVincentis,

I have been able to complete the following research into the above referenced matter that I have been discussing with you and your staff. It is my hope that this information, together with the package that I had previously faxed to Jack Dadario of your office shall aid in the processing of the claim for reimbursement of the funds paid by Steve Caiazzo in settlement of this matter.

From the Court records, the following are the apparent facts that led to the payment of \$ 35,000.00 in settlement of the claim at the time of the closing on real estate owned by Mr. Caiazzo located at 19-21 Skipper Way, Gloucester, MA. on April 23, 2003.

The incident occurred on September 13, 1996 when Mr. Cuttichia, who was allegedly a patron in the Cai's establishment was struck in the face by another patron at approximately 1:30 AM. The police were evidently not called, and the victim did not seek medical attention until 10:00 AM the following morning at Lawrence Memorial Hospital Emergency Room in Medford, MA. at that time he was treated for a 1 1/2 " laceration on his left cheek, a swollen left eye and face. The cut was stitched, and x-rays were taken that revealed no fracture. The total medical bill was \$ 741.00 of which the victim was responsible for \$ 291.00.

No further treatment history was reported, nor was there any indication of permanent injury. He was released from the emergency room at 11:55AM that same morning. To the best of my knowledge there was never a licensing board hearing conducted on any complaints raised as a result of the incident.

Suit was commenced in 1998 with two separate counts for relief alleged. The first was a claim that the Defendant had negligently failed to train or retain help, the second a claim of negligent conduct of its business affairs in a manner that caused the injury to occur.

A default judgment entered after hearing on December 10, 1998. The Plaintiff claimed lost wages (he is a self employed plasterer d/b/a Nino's Plastering in Medford, MA.) of 3 weeks @ \$750.00 / week for a total of \$ 2250.00. Judge Cavanaugh, the presiding judge awarded the Plaintiff \$ 24,900.00. Execution issued on February 2, 1999. The matter was enforced by a judgment in Essex Superior Court in late 2002, that awarded additional interest for a total recorded execution of approximately \$ 41,000.00.

Mr. Caiazzo did not receive notice of the original suit in Malden, or the later Essex Superior Court matter. He was never called before the licensing board nor did the police investigate the incident. Please forward this information to the company who held the insurance policy covering the premises during the period of the incident.

I wish to also inquire concerning Mr. Caiazzo's claim for compensation for the loss of his personal and business memorabilia at the time that Harbor Realty took possession of the former Scuttlebutts location in Salem, MA. I believe that Jack Dadario was handling this claim.

Thank you for your interest and efforts in these matters

Very truly yours,

Thomas P. Collins

Exhibit 3

1 connection with Cai's Food & Spirits?

2 A. No.

3 Q. And when was it that you first became -- when
4 in 1998 was it that -- when did Scuttlebutt's
5 open?

6 A. I believe it was in '98.

7 Q. Do you remember what month?

8 A. I think it was in October.

9 Q. To catch the Halloween rush?

10 A. That's exactly right.

11 Q. I have to drive by that place so I know about
12 that.

13 A. Well, we needed to collect that revenue
14 that's for sure because too much was going
15 out and there wasn't enough coming in. Those
16 two days settled that quickly, though.

17 Q. Was it part of -- and I want to specifically
18 say on this question I don't want you to tell
19 me any communications that you had with Mr.
20 Collins. Okay. But I do need to get an
21 understanding of the scope of his
22 representation, what he was retained to do.
23 Mr. Collins did become involved with the
24 claim by Mr. Cuttichia against you, correct?

25 A. Correct.

1 A. I believe after I spoke with D'Addario and
2 got no response, spoke to Joe DeVincentis,
3 spoke to Jean DeVincentis, got no
4 satisfaction. When I saw the lien filed
5 against my property without me knowing
6 because I never signed any documentation or
7 any certified letters or being served or
8 anything, a good period of time elapsed
9 before I finally realized that happened. And
10 at that point, I tried to rectify it and say,
11 "Why wasn't I notified? Why was this claim
12 paid? Why did anything not happen on this
13 case and I was not notified?"

14 . As a result of seeing the paperwork
15 which eventually determined the lack of
16 injury that occurred to Mr. Cuttichia as
17 opposed to what he initially said, I believe
18 Mr. Collins submitted a letter to Mr.
19 DeVincentis and also spoke to him regarding
20 how the possibility ever existed that someone
21 would pay \$45,000 out, would allow \$45,000 to
22 be paid without defending the case and
23 looking into a near -- the hospital records
24 proving that there were no injuries and he
25 was released almost immediately, that I was

1 not notified. And that's what eventually
2 turned out to be the lack of cooperation
3 between Joe DeVincentis, John D'Addario, Jean
4 D'Addario, and the inappropriate way of them
5 not getting back to me and informing me as my
6 agent as to why certain things happened and
7 the money being paid out.

8 Q. Let's back up now.

9 A. Uh-huh.

10 Q. Mr. Collins was representing you and
11 Scuttlebutt's -- generally, with regard to
12 the operation of Scuttlebutt's back in 1998,
13 correct?

14 A. Correct.

15 Q. And it was fair to say within -- generally
16 within that time period that you got your
17 first notice of the Cuttichia claim, correct?

18 A. From the attorney, is that the question?

19 Q. Right.

20 A. I received notice from the attorney sometime
21 after '96 when this supposedly happened, the
22 incident.

23 Q. Right. Okay.

24 A. The reason why I know that is because the
25 date was on it as to when it supposedly

1 Q. Let me ask it this way: You got a letter
2 from a lawyer that reflected that Cuttichia
3 was going to make a claim against you.
4 You're saying in this case here that you
5 should have had insurance for the claim
6 against you by Cuttichia. Okay.

7 Here's my question: Was it part of
8 Mr. Collins' job to chase any insurance
9 coverage that might have been available to
10 you for the liability claim against you by
11 Cuttichia?

12 A. Mr. Collins didn't know anything about
13 chasing anybody until I brought this to his
14 attention because of the lack of
15 correspondence from Joe DeVincentis, Mr. and
16 Mrs. D'Addario, and Medallion. And when I
17 received all the mail that was sent to my
18 wife's house and she was served and was
19 signing my name that she received it, she
20 held onto all the mail for over a year. So
21 as a result, there was no way of Mr. Collins
22 going to court and properly representing me
23 in the court case. Do you see what I mean?
24 So this thing went on for...

25 Q. Okay. Whenever -- well, let me try something

1 letter dated December 12, '02 from the Law
2 Offices of Stephen Whitman to Thomas Collins.

3 MR. CARNAHAN: Okay.

4 Q. Mr. Caiazzo, I'm going to hand you Exhibit 7
5 and ask if you've ever seen that letter?

6 A. (Witness reviews document) Yes, I have.

7 Q. And do you remember seeing that back in
8 December of '02?

9 A. It's familiar. I remember seeing Stephen
10 Whitman. And I remember seeing this as one
11 of the envelopes that was taken by my wife
12 and signed because there were two or three of
13 them by the Law Offices of Stephen Whitman.

14 Q. Okay. And you see it's a letter addressed to
15 Mr. Collins?

16 A. Right.

17 Q. And Mr. Collins was representing you at that
18 time?

19 A. Yes, he was.

20 Q. And Mr. Collins was representing you at that
21 time in connection with Mr. Cuttichia's
22 claim, correct?

23 A. This is when I received all this information
24 from my wife that I started to open it up and
25 said this is the Whitman -- I mean Cuttichia

1 case that's been lagging. And this was the
2 reason why the lien was put on the property.
3 And that's when I decided to call Joe and
4 settle it, find out. And then I went to Tom,
5 and I said, "Here's the guy. Call him and
6 get this thing squared away." And that's
7 what this is.

8 Q. So would it be fair to say that you had
9 engaged Mr. Collins to get involved in the
10 Cuttichia claim prior to the date of that
11 letter?

12 A. This was part of a stack of letters which I
13 have from the Law Offices of Stephen Whitman
14 that were mailed to King Street, maybe
15 Pleasant Street, all of them. Some of which
16 were secured by return request mail that was
17 not signed by me. My wife signed my name.
18 These were opened by me when I found them.
19 These were backdated because the time period
20 extended it from the time she held on. I
21 called Tom. I says, "Get something -- this
22 is what the deal is."

23 Q. Again, I don't want to interrupt you, but
24 that doesn't -- what you just said doesn't
25 apply to this letter.

1 A. Why wouldn't it?

2 Q. Because it's not addressed to you.

3 A. I understand this. But this is something
4 that Collins had called Whitman on because
5 Whitman is the one that I called Collins on
6 after I received the stack of mail.

7 Q. Yes.

8 A. So he contacted Whitman and Whitman
9 apparently wrote a letter here.

10 Q. Right. All I'm saying is this letter that
11 you have that you're holding, Exhibit 7,
12 that's not a letter that was in the stack of
13 documents that you got from your wife and
14 that you gave to Mr. Collins, correct?

15 A. No. This is the type of letters from Stephen
16 Whitman that I recognized as being part of a
17 group of letters that were sent to the other
18 address that I never got until later.
19 Subsequently, this was the follow-up letter
20 that I -- after Tom Collins contacted
21 Attorney Whitman. This is made out to
22 Collins. But the other ones were made out to
23 me. This is just a follow up from an
24 attorney to an attorney to try and settle.

25 Q. And where are all these prior letters from

1 Whitman's office to you?

2 A. Tom Collins has them. I have a copy.

3 Q. Where is the copy you have, because it hasn't
4 been produced?

5 A. Oh, I got plenty of copies.

6 Q. Well, where are they?

7 A. Where are they? I have them.

8 Q. Where in your possession?

9 A. Well, I don't have them with me today. But I
10 have them. Tom Collins had copies. I made
11 enough copies for everybody. Tom Collins was
12 handling it. I held on to them.

13 Q. Where do you keep all these documents? Is
14 there a particular place? Are they down in
15 Florida?

16 A. Yes.

17 Q. And where -- do you own the property in
18 Florida?

19 A. No, I don't.

20 Q. Okay. Your girlfriend does?

21 A. Yes.

22 Q. And is there -- where do you keep it? Do you
23 have a desk or a filing cabinet?

24 A. I have them in my garage.

25 Q. In your garage. Do you have boxes in the

1 Q. Okay. But your testimony is you specifically
2 received a policy or a documentation that
3 told you you had disability coverage?

4 A. Yes, absolutely.

5 Q. Okay. And has that been produced in this
6 case?

7 A. No.

8 Q. Why not?

9 A. Well, number one, the document that I had
10 submitted to Tom Collins that we were sitting
11 in his conference room and I noticed that
12 it's gone beyond me. I says, "I'm entitled
13 to this income policy. I forgot about this,
14 and there it is." I said, "Send this" -- I
15 says, "I need a copy. After you do what you
16 have to do, submit this to D'Addario" or
17 whatever. I says, "Call me back. I need a
18 copy of that."

19 Now, in addition to that, at the end
20 of Scuttlebutt's from the time we had -- we
21 had filed for bankruptcy. When the lease was
22 broken through Landolphi, they came in and
23 locked the doors. Okay. So my office was
24 locked. All the files were in there when I
25 left. I was notified that I would have to

1 A. Right.

2 Q. That showed that you had a disability
3 coverage?

4 A. Correct.

5 Q. And the original question was why haven't
6 those documents been produced? Okay. So
7 that's what I need the answer to.

8 A. Okay. The question is -- I did mention to
9 you earlier that Tom Collins had that sheet.
10 It was a cover sheet. It wasn't the actual
11 policy. It was a cover sheet similar to what
12 you have there in that package. What was
13 also said was that I under no circumstances
14 was going into my office believing that
15 someone was going to be allowed to trash that
16 thing and take what they wanted and leave
17 paperwork everywhere, which is exactly what I
18 did.

19 Q. Well, I'll tell you that I have better things
20 to do later on. I'm trying to make this
21 easy, streamline it as best I can.

22 A. I understand.

23 Q. Here's Exhibit 2. These are all the
24 documents you've produced in this case.

25 A. Right.

1 Q. Do you see any document in here that tells
2 you that you have disability insurance
3 coverage?

4 A. No, not in these.

5 Q. All right. Where are any disability
6 insurance documents currently as far as you
7 know?

8 A. As I said to you earlier, Tom Collins had the
9 sheet. I looked at it, handed it to him,
10 told him to do what he had to do to collect
11 this. That's when his communication with the
12 agency started. Okay. At that point, this
13 is when I found out that he wasn't doing what
14 he was supposed to do. And I called him for
15 three months. He never called back. This
16 was when I filed the claim with the BBO and
17 everything else because I asked him to send
18 me the document showing the disability. I
19 had to have the BBO call him and demand that
20 he send me my file. The file did not include
21 that sheet of paper obviously because he knew
22 how important it was to me. But in addition
23 to that, copies of that policy were in effect
24 because I was looking right at it. And I had
25 to produce paychecks for an audit suggested

Page 18

1 The policy was brought up to me, and I paid
 2 as I was supposed to. I remember distinctly
 3 having it in '98, '99, 2000 and 2001.
 4 Q. Okay. I'm going to stop you right there.
 5 A. Okay.
 6 Q. To whom would the checks be made payable to
 7 for the income disability policy that would
 8 have been in effect at the time that you
 9 became disabled in August of 2001?
 10 A. Again, the checks are all made out to one
 11 company.
 12 Q. Who is that?
 13 A. What the agent dispenses, I don't know.
 14 Again, Standard Financing.
 15 Q. So when you make payments for all of your
 16 policies, you write one check? Whether
 17 you're paying for your income disability,
 18 your liability, your worker's comp, you
 19 write one check; is that right?
 20 A. On those policies. Initially, you have to
 21 understand that when I make a deposit, a
 22 down payment on my policies, some of it is
 23 paid through the agency. The agent is more
 24 than happy to give it to you and verify all

Page 20

1 that policy in effect? I would like to see
 2 it so I can talk to you about it.
 3 A. I explained to you the last time, and I will
 4 say it again, that all my documentation and
 5 everything that I had was up in Scuttlebutts
 6 that was removed without having the proper
 7 -- without having that secured. I never got
 8 a call. Everything was thrown out. My
 9 personal -- most of this stuff I had was in
 10 my desk. I filled up my car as best I
 11 could. What I couldn't fill up I had to
 12 leave at the top of the stairs inside all
 13 locked up. So John D'Addario and that
 14 agency -- and I will make this quick. I'm
 15 sorry because I don't -- but very simply,
 16 according to Medallion Insurance, I didn't
 17 have any insurance. That's the problem.
 18 They said I had no insurance, I had no fire,
 19 I had no workman's comp, I didn't have any
 20 awning insurance. You can't ask me for
 21 paperwork that was thrown out.
 22 Q. And that's all you have to say. My question
 23 is: Do you have any documentation? You
 24 just have to tell me it was thrown away.

Page 19

1 this. All I'm telling you is I have the
 2 same insurance every year as a businessman.
 3 I know what my needs are and what I have to
 4 do in order to take care of my family and to
 5 cover myself for liability, all various
 6 liabilities. This particular policy as you
 7 are asking says that I paid Standard
 8 Funding. Yes, I do. But the extenuating
 9 circumstances are that there are various
 10 policy lapses during that that have to be
 11 restructured and started up again. So
 12 because it doesn't reflect on that doesn't
 13 mean that you're going to ask me say, hey,
 14 listen, I don't have insurance on that
 15 because I do. It just doesn't reflect it on
 16 that sheet because it could have overlapped
 17 and stopped two months later or six months
 18 later.
 19 Q. I understand what you're saying,
 20 Mr. Caiazzo. I just don't have any
 21 documentation to point to which says that
 22 there's the income disability policy. Do
 23 you have that documentation that you can
 24 provide me that says that you actually had

Page 21

1 A. I told you that last time.
 2 Q. Your answer is you don't have any
 3 documentation with respect to the income
 4 disability policy?
 5 A. That's correct.
 6 Q. And what you're telling me is that you
 7 believe that there may have been some
 8 restructuring of that income disability
 9 policy that would have made it not appear on
 10 this Standard Funding finance agreement. Is
 11 that fair to say?
 12 A. I believe so, yes.
 13 Q. And do you know about when that income
 14 disability policy was being renewed? Do you
 15 have a memory of that?
 16 A. Like I told you, it could overlap for two
 17 months, it can go for two years. According
 18 to my conversation with John D'Addario, he
 19 brought it up and suggested very strongly I
 20 take it out. Best of my recollection, I
 21 paid it, whether it was part of the deposit
 22 back in '98, '99 and then it renewed in 2000
 23 and carried over, I don't know. But it was
 24 there because we talked about it on a

6 (Pages 18 to 21)

Exhibit 4

1 Q. But you have seen documentation that he
2 made a claim for Social Security
3 Disability?

4 A. My recollection is I think I saw at some
5 point a statement of his monthly benefit.

6 Q. Did you ever see any documentation
7 relating to a claim for a disability
8 policy?

9 A. No.

10 Q. Without getting into the substance of any
11 conversations, did you have conversations
12 with Mr. Caiazzo regarding the Cuticchia
13 claim?

14 A. Respectfully, I'm going to assert the
15 attorney/client.

16 Q. I understand the position you're in, Mr.
17 Collins, but this is not asking for any
18 information regarding a conversation.

19 MR. MANNIX: I think you can
20 answer the question yes or no.

21 A. The answer is yes.

22 Q. Did you have conversations with Mr.
23 Caiazzo regarding his claim for disability
24 under a disability policy?

25 A. Yes.

1 Q. Did you have conversations with Mr.
2 Caiazzo regarding his claim for property
3 loss when Scuttlebutt's was seized?

4 A. Yes.

5 Q. With respect to the substance of those
6 conversations, you're asserting the
7 attorney/client privilege today; is that
8 right?

9 A. That's correct.

10 MS. FLORIO: I think I'm just
11 going to suspend my portion of the
12 deposition at this time. I'm not sure if
13 you have any questions, Mr. Carnahan.

14 But I'm just going to go on the
15 record to say I'm suspending to the extent
16 that there's certainly a number of
17 questions where the privilege was asserted
18 today and we'll have to resolve the issue
19 relating to that privilege.

20 It's certainly our position that
21 Mr. Caiazzo has waived that privilege both
22 in the context of asserting claims against
23 Mr. Collins, which at least in part
24 involve the claims that are present here
25 today, and also waived that claim with